

**OPEN RECORDS AND MEETINGS OPINION
2001-O-18**

DATE ISSUED: December 27, 2001

ISSUED TO: Mary K. O'Donnell, Rolette County State's Attorney

CITIZEN'S REQUEST FOR OPINION

On December 5, 2001, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Ella Davis asking whether the Rolette County Board of Commissioners violated various sections of the open meetings law regarding an alleged "pre-meeting" of the Board on November 13, 2001.

FACTS PRESENTED

On November 13, 2001, the Rolette County Board of Commissioners (Board) held a meeting to conduct a public hearing on redesignating the offices of county auditor, recorder, and treasurer as appointed offices. See N.D.C.C. § 11-10.2-02. The Board's vice chairman presided over the hearing and referred to a discussion that had occurred immediately prior to the hearing to decide "what we [the Board] want to accomplish today." Based on this remark, Ms. Davis alleges the Board held an illegal "pre-meeting" for which public notice was not provided.

In its response to the request for this opinion, the Board denies holding a "pre-meeting" and offers an explanation for the vice chairman's remark. According to the Board, the vice chairman met with the Board chairman and county auditor before the November 13 meeting simply to discuss the procedure to follow for the ensuing public hearing. Although the vice chairman does not recall making the remark alleged by Ms. Davis, neither does he deny making the remark, and indicates he would have been referring to his discussion of the Board's hearing procedure with the Board chairman and the county auditor.

ISSUE

Whether the Rolette County Board of Commissioners held a secret meeting on November 13 before its regular meeting.

ANALYSIS

Ms. Davis has previously alleged a similar secret "pre-meeting" by the Rolette County Social Service Board. With regard to that allegation, I said:

Whether a quorum of the Board members participated in a gathering regarding the Board's business is a question of fact. It is beyond my authority in issuing opinions under N.D.C.C. § 44-04-21.1 to resolve disputed facts. For purposes of this opinion, I must assume as true the Board's denial that its members participated in a "pre-meeting" prior to the regular Board meeting Under the facts presented, it is my opinion the Board did not hold a secret, closed meeting

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The Board admits its chairman and vice chairman met with the county auditor to discuss the procedure for the upcoming hearing. The definition of the term "meeting" as used in the open meetings law is limited to gatherings of a "quorum" of a "governing body." N.D.C.C. § 44-04-17.1(8). Since the discussion of the hearing procedure only involved two of the five members of the Board, the gathering did not involve a "quorum"¹ of the Board and it is my opinion the Board did not hold a secret "pre-meeting" on November 13.

CONCLUSION

It is my opinion the Board did not hold a secret, closed meeting on November 13, 2001, in violation of North Dakota law.

Wayne Stenehjem
Attorney General

Assisted by: James C. Fleming
Assistant Attorney General

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¹ As used in the definition of "meeting," the term "quorum" means "one-half or more of the members of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity." N.D.C.C. § 44-04-17.1(14).